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OFFICE OF PETITIONS

In re Application of :
Kerzendorf et al. :
Application No. 09/907,513 : DECISION ON PETITION
Filed: 17 July, 2001 :
Atty Docket No. U 013457-4 :

This is a decision on the petition filed on 30 August, 2005, under 37 CFR 1.137(b),¹ to revive the above-identified application.²

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). Grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

² It is noted that a petition under 37 CFR 1.181 to withdraw the holding of abandonment was filed on 6 June, 2005, prior to the filing of the present petition to revive. The filing of the present petition to revive the application is being construed as a request not to pursue the petition under 37 CFR 1.181. As such, the petition under 37 CFR 1.181 will not be further considered. Petitioners must inform the Office if this is an incorrect interpretation.

The petition is GRANTED.

The application became abandoned on 4 September, 2004, for failure to file a proper reply to the final Office action mailed on 3 May, 2004, which set a three (3) month shortened statutory period for reply. On 7 September, 2004 (certificate of mailing date 31 August, 2004), petitioners filed an amendment after final rejection, a one (1) month extension of time, and a statement of accuracy of translation containing the certificate of mailing. The amendment did not place the case in condition for allowance, however, and an Advisory Action was mailed on 3 November, 2004. Notice of Abandonment was mailed on 15 March, 2005.

Petitioners have filed a Request for Continued Examination (RCE) and have indicated that the previously filed amendment is the submission required under 37 CFR 1.114.

This application is being referred to Technology Center Art Unit 2121 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.



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